



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

NOV 24 2008

**Robert K. Kelner, Esq.
Covington & Burling LLP
1201 Pennsylvania Avenue NW
Washington, DC 20004-2401**

**Re: MUR 5849
Bank of America Corporation**

Dear Mr. Kelner:

On November 12, 2008, the Federal Election Commission accepted the signed conciliation agreement submitted on behalf of your client, Bank of America Corporation, in settlement of violations of 2 U.S.C. §§ 441b(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to the Bank of America Corporation.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the effective date of the conciliation agreement. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Marianne Abely
**Marianne Abely
Attorney**

**Enclosure
Conciliation Agreement**

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

In the Matter of

Bank of America Corporation

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MUR 5849

CONCILIATION AGREEMENT

This matter was initiated by a *sua sponte* submission filed with the Federal Election Commission ("the Commission") by Bank of America Corporation, on behalf of its indirect wholly owned subsidiary, Bank of America N.A. (the "Bank"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. §§ 437g(a)(1) and (2). In the submission, Bank of America Corporation ("Respondent") voluntarily disclosed that the Bank reimbursed political contributions totaling \$10,030, made by thirteen officers and managers in its Student Banking and Wholesale Lending Divisions from 1999 through mid-2004. Based on the facts voluntarily disclosed by Respondent and other available information, the Commission found reason to believe Respondent violated 2 U.S.C. §§ 441b(a) and 441f.

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

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III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Respondent is a publicly held corporation headquartered in Charlotte, North Carolina. Bank of America, N.A. is an indirect wholly-owned subsidiary of Respondent.

2. 2 U.S.C. § 441f prohibits: (1) making a contribution in the name of another; (2) knowingly permitting one's name to be used to effect such a contribution; and (3) knowingly accepting such a contribution. In addition, no person may knowingly help or assist any person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).

3. Corporations and national banks are prohibited from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for Federal office. 2 U.S.C. § 441b(a). Section 441b(a) also makes it unlawful for any candidate, political committee, or other person knowingly to accept or receive a contribution prohibited by section 441b(a).

4. During the course of an internal audit instituted in July 2005, Respondent discovered information indicating that the Bank's then Senior Vice President in charge of the Student Banking Division may have approved the reimbursement of political contributions to federal candidates and political committees. Respondent retained outside counsel to conduct an internal investigation into the alleged reimbursement of political contributions to federal candidate and political committees.

5. The internal investigation determined that \$10,030 in federal political contributions made by thirteen officers and managers in the Bank's Student Banking and Wholesale Lending Divisions from 1999 through mid-2004 were reimbursed with Bank funds.

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6. Respondent's internal investigation discovered that the Senior Vice President in charge of the Student Banking Division and two Student Banking Division managers had approved the reimbursement with Bank funds of political contributions to federal candidates and political committees made by subordinate employees in that division. In total, \$8,200 in political contributions to federal candidates and political committees were reimbursed with corporate funds:

Recipient Committee	Date	Amount
Buck McKeon for Congress	12/15/99	\$500
Tim Johnson for South Dakota, Inc.	12/6/01	\$250
Tim Johnson for South Dakota, Inc.	12/14/01	\$250
Tim Johnson for South Dakota, Inc.	12/19/01	\$250
Buck McKeon for Congress	5/6/02	\$1,000
Buck McKeon for Congress	10/11/02	\$500
Buck McKeon for Congress	10/16/02	\$500
Buck McKeon for Congress	10/25/02	\$500
Buck McKeon for Congress	11/10/03	\$400
Buck McKeon for Congress	11/10/03	\$400
Buck McKeon Congress	11/10/03	\$400
Buck McKeon for Congress	11/10/03	\$400
Buck McKeon for Congress	12/9/03	\$400
Buck McKeon for Congress	12/10/03	\$400
Earl Pomeroy for Congress	12/11/03	\$250
Buck McKeon for Congress	3/3/04	\$150
Buck McKeon for Congress	5/19/04	\$150
Buck McKeon for Congress	7/8/04	\$600
Buck McKeon for Congress	7/9/04	\$600
Buck McKeon for Congress	7/13/04	\$300
Total:		\$8,200

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7. Respondent's internal investigation also discovered the reimbursement with Bank funds of political contributions to federal political committees made by employees of the Bank's Wholesale Lending Division. In total, \$1,830 in political contributions to federal political committees were reimbursed with corporate funds:

Recipient Committee	Date	Amount
Grassley Committee, Inc.	9/5/03	\$250
Dallas/Ft. Worth Assoc. of Mortgage Brokers PAC ("DFWAMB PAC")	4/12/04	\$500
DFWAMB PAC	5/17/04	\$250
DFWAMB PAC	5/17/04	\$80
Texas Association of Mortgage Brokers PAC ("TAMB PAC")	10/7/04	\$250
TAMB PAC	9/16/04	\$500
	Total:	\$1,830

8. Based on the findings of its internal investigation, Respondent has taken a variety of remedial measures to ensure that its employees will not seek, authorize, or receive reimbursements for political contributions. These actions include amending the relevant portions of its Code of Ethics and Code of Ethics Training Manual to emphasize and clarify the prohibition on reimbursing employee political contributions with Bank funds. In addition, Respondent amended its Travel and Expense Policy to include a section stating that donations could not be made to political organizations. Further, Respondent developed a "compliance filter" computer program to identify suspicious reimbursements. Respondent also notified each of the affected political committees regarding the impermissible contributions and requested they disgorge the money received to the United States Treasury.

9. In determining the appropriate civil penalty in this matter, the Commission considered a number of factors, including the remedial measures initiated by Respondent to

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avoid future violations of the Act and Respondent's full cooperation with the Commission throughout the course of its investigation.

V. Respondent, due to the actions of its indirect wholly-owned subsidiary, Bank of America, N.A., made prohibited corporate contributions and contributions in the name of another in violation of 2 U.S.C. §§ 441b(a) and 441f.

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of One Thousand and Eight Hundred Dollars (\$1,800) pursuant to 2 U.S.C. § 437g(a)(5)(A). The Respondent will cease and desist from violating 2 U.S.C. §§ 441b and 441f. Further, Respondent waives its rights to a refund of all political contributions from the recipient committees.

VII. Respondent has confirmed that in so far as it is aware, the contributions listed in this Conciliation Agreement represent the entirety of federal political contributions known to have been reimbursed by the Bank. If at any time within the next five years, Respondent learns of facts indicating that additional federal political contributions may have been reimbursed using Bank funds, Respondent will immediately report these facts to the Commission. If Respondent fails to report such information and the Commission learns at any time after the execution of this Agreement that it reimbursed additional federal political contributions, the Commission will consider this Conciliation Agreement to have been violated by Respondent and any such contributions will be subject to further enforcement action by the Commission against Respondent.

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VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

X. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement

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shall be enforceable.

FOR THE COMMISSION:

Thomasenia P. Duncan
General Counsel

BY:


Ann Marie Terzaken
Associate General Counsel
for Enforcement

11/24/08
Date

FOR THE RESPONDENT:

Teresa M. Brenner
(Name) Teresa M. Brenner
(Position) Associate General Counsel

October 17, 2008
Date

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